REVIEW OF TOBACCO QUOTA REFERENDUM; AGRICULTURAL MARKETING SERVICE INVESTIGATION OF ILLEGAL SEED EXPORTS; AND PROBLEMS RELATED TO NONAUCTION WAREHOUSE SALES OF TOBACCO

HEARING

BEFORE THE

SUBCOMMITTEE ON TOBACCO AND PEANUTS

OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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[1] Effective only for the first session of the Ninety-ninth Congress.

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REVIEW OF TOBACCO QUOTA REFERENDUM; AGRICULTURAL MARKETING SERVICE INVESTIGATION OF ILLEGAL SEED EXPORTS; AND PROBLEMS RELATED TO NONAUCTION WAREHOUSE SALES OF TOBACCO

FRIDAY, NOVEMBER 1, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TOBACCO AND PEANUTS,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:45 a.m., in room 1302, Longworth House Office Building, Hon. Charles Rose (chairman of the subcommittee) presiding.

Present: Representatives Hatcher, Tallon, Thomas, Hopkins, and Combest.

Staff present: Glenda L. Temple, clerk; Joan Teague Rose, Heidi Pender, Bernard Brenner, and Rick Kirchhoff.

OPENING STATEMENT OF HON. CHARLES ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. ROSE. The first subject for the morning is to review the tobacco quota referendum, also to talk to the Agriculture Marketing Service about their investigation of illegal seed exports and also to concern ourselves with problems related to nonauction warehouse sales of tobacco.

Our first witness is Mr. Earle J. Bedenbaugh, Deputy Administrator for State and County Operations, U.S. Department of Agriculture. He is accompanied by Mr. Lionel Edwards, Director of the Agricultural Marketing Service.

What can you tell us, gentlemen, about the tobacco quota referendum? There is a lot of concern among many of us and our constituents as to how you are going to conduct it. Tell us about it.

STATEMENT OF EARLE J. BEDENBAUGH, DEPUTY ADMINISTRATOR, STATE AND COUNTY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY LIONEL EDWARDS, DIRECTOR, AGRICULTURAL MARKETING SERVICE; J.W. YORK, ACTING DIRECTOR, TOBACCO AND PEANUTS DIVISION, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Mr. BEDENBAUGH. I have a prepared statement that I will read and then be available for questions.

Mr. ROSE. Thank you very much.

Mr. BEDENBAUGH. Mr. Chairman and members of the subcommittee, my name is Earle J. Bedenbaugh. I am Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service [ASCS]. I appreciate the opportunity to appear before you today to discuss the nonauction warehouse sales of tobacco, the sale of tobacco seed, and the administration of the Flue-cured, tobacco referendum.

Section 317(d) of the Agricultural Adjustment Act of 1938, as amended, provides that the Secretary of Agriculture shall proclaim, not later than December 15, 1985, a national marketing quota for Flue-cured tobacco for the 3 marketing years beginning on July 1, 1986.

Also, section 312(c) of the 1938 act provides that within 30 days after the proclamation of the national marketing quotas, the Secretary shall conduct a referendum of farmers engaged in the production of the 1985 crop of Flue-cured tobacco to determine whether such farmers are in favor of, or opposed to, such quotas for the next 3 marketing years.

The regulations which govern the conduct of marketing quota referenda provide at 7 CFR 717.2 that the Deputy Administrator, State and County Operations, ASCS, shall be in charge of, and responsible for, conducting each referendum required by the 1938 act. These regulations prescribe that each referendum shall be by mail ballot unless the Administrator, ASCS, or the Deputy Administrator, State and County Operations, ASCS, prescribes that a particular referendum shall be held at polling places.

Except for a special referendum which was conducted with regard to poundage quotas for burley tobacco in 1971, referenda held since 1967 for all commodities have been held by mail ballot. The referenda have been held by mail ballot as cost reduction measures.

In the past, we have held Flue-cured tobacco referenda at polling places in order to accommodate Tobacco Associates, Inc., in the conduct of its referenda in North Carolina and South Carolina. The Tobacco Associates, Inc., holds referenda with regard to Flue-cured tobacco promotional programs which are authorized by State law.

For a number of years prior to the time when ASCS began to conduct its referenda by mail ballot, ASCS and Tobacco Associates, Inc., had held their referenda jointly. When ASCS began to hold referenda by mail ballot, it was found that Tobacco Associates, Inc., did not have the authority under State law to conduct referenda by mail ballot.

ASCS, under contractual arrangements with Tobacco Associates, Inc., continued to conduct joint referenda at the polling place. The amounts paid by Tobacco Associates, Inc., to reimburse ASCS for the conduct of those referenda have resulted in a net cost to ASCS which is no more than the cost of conducting a referenda by mail ballot.

Our experience indicates that more people vote when a referendum is held by mail than vote when the polling place method is used. Increases of 19.7 percent, 15.1 percent, and 50.2 percent were experienced in the first mail referenda which were conducted for burley, Fire-cured, and dark air-cured tobaccos, respectively, when

compared to the preceding polling place referendum which had been held for each respective kind of tobacco.

Our experiences in the last Flue-cured tobacco referendum revealed the need to exercise a greater degree of supervision and training when conducting our referenda. We have done this by sending explanatory information to our State and county ASCS employees in April 1985.

In addition, meetings have been scheduled with our personnel in the Flue-cured tobacco States to explain voter eligibility requirements and to put an emphasis on the need to exercise extreme care in following regulations and implementing procedures in conducting the referendum. Similar efforts have been, and will continue to be, taken with respect to the burley tobacco referendum.

In view of all of these factors, I have notified our State and county ASCS offices that the upcoming Flue-cured tobacco referendum will be conducted by mail ballot. These offices have been directed to publicize the referendum, including voter eligibility requirements and the method for conducting the referendum.

Currently, tobacco producers may market their tobacco crop through the auction warehouse system or directly to tobacco dealers. This latter method is commonly referred to as nonauction tobacco sales. The two methods of marketing with respect to record-keeping and reporting requirements are described below.

At the time the tobacco is weighed in, the producer presents a marketing card to a warehouse employee to identify the farm of production. The marketing card remains in the custody of the warehousemen until that particular lot of tobacco is marketed. After the auction, the marketing card and the sales bill are presented to the ASCS marketing recorder.

The marketing recorder adds the pounds on the sales bill and deducts the pounds sold from the remaining quota balance on the producer's marketing card. The producer's record of marketing is submitted to Kansas City Management Office on form MQ-72-1 where it is entered into a computer. Form MQ-72-1 includes the date of sale, the warehouse identification number, and the pounds marketed.

At the end of the marketing season, KCMO furnishes each county ASCS office a report of all the marketings—auction and nonauction—for each farm in the county. The county ASCS office compares each farm's marketing card with the KCMO report of marketing and reconciles any differences.

Any tobacco dealer must be registered with USDA. The tobacco program regulations issued by the Department define a "dealer" as a person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

Such registrations are handled by the North Carolina State ASCS Office. Dealers are issued a dealer's identification card, form MQ-79-2, and form MQ-79, dealers record book.

When a tobacco producer sells tobacco directly to a dealer, the producer presents a marketing card which identifies the farm of production to the dealer. The dealer records the date of sale on the marketing card and deducts the pounds sold from the remaining quota balance on the producer's marketing card.

The dealer completes form MQ-72-2, Report of Tobacco Non-Auction Purchases. The report includes the date of purchase, the dealer registration number, the farm identification number, the producer's name and address, the pounds purchased, and the producer's signature.

The dealer records this transaction in a dealer record book. At the end of each week during the marketing season, the dealer submits a copy of forms MQ-72-2 and MQ-79 to the State ASCS office in the State where the dealer's account is maintained. Copies of these documents are furnished to KCMO where they are entered into a computer.

Each dealer is responsible for maintaining current records of purchases and resales on the dealer record book. Each dealer is also responsible for collecting marketing quota penalties from producers and collecting producer contributions to the no net cost tobacco fund or account and submitting such collections to the appropriate State ASCS office.

At the end of the dealer's marketing season, the State ASCS office reconciles each dealer's account and if the dealer's resales of tobacco exceeds the quantity purchased, the dealer is assessed a marketing quota penalty.

[The prepared statement of Mr. Bedenbaugh appears at the conclusion of the hearing.]

Mr. ROSE. Let me stop you there.

You say in the last line:

At the end of the dealer's marketing season, the State ASCS office reconciles each dealer's account and, if the dealer's resales of tobacco exceeds the quantity purchased, the dealer is assessed a marketing quota penalty.

How often does that happen?

Mr. BEDENBAUGH. Well, whenever the records are searched.

Mr. ROSE. How many times did you penalize anybody in 1984?

Mr. BEDENBAUGH. Not many. I don't have those figures exactly.

Mr. ROSE. Mr. Edwards, would you know?

Mr. YORK. I don't have the exact figures. We can make them available to you.

Mr. ROSE. How many? Do you have a record?

Mr. YORK. Very small.

Mr. ROSE. One hundred, fifty, ten?

Mr. YORK. Probably less than 50.

Mr. ROSE. All right.

What is the quota penalty?

Mr. YORK. Let me turn here and try to get the exact figure.

[The information follows:]

For the 1985-86 marketing year, the penalty rate for Flue-cured tobacco is $1.36 per pound.

Mr. ROSE. Before you go into tobacco seeds, do the members of the panel have any questions?

Mr. TALLON. No.

Mr. THOMAS. No.

Mr. ROSE. Either about the conduct of the sale or about——

Mr. TALLON. Mr. Bedenbaugh, on voter eligibility requirements, can you tell me exactly who is eligible and who isn't?

Mr. BEDENBAUGH. Those people who share in the production of a crop of tobacco are eligible to vote.

Mr. ROSE. You mean sharing in the risk?

Mr. BEDENBAUGH. Yes; sharing in the risk of tobacco are eligible to vote and we get the voter registration list from the operators who come in and certify their tobacco and they also indicate in their certification who else—whether it be a tenant—shares in the risks of the production of that crop of tobacco, and we also get voter eligibility list from people who transfer, who lease tobacco off their farm to another farm, then we have a form that these people show up on, and we generate that list from those two forms in the county office.

Mr. TALLON. Are all allotment holders eligible?

Mr. BEDENBAUGH. All allotment holders?

Mr. TALLON. Yes.

Mr. BEDENBAUGH. Not necessarily. An owner of a farm could cash-rent his tobacco for a fixed amount to someone else who grows that tobacco on that farm, and the owner of that farm would not be eligible to vote in this referendum.

Mr. ROSE. Because he doesn't share in the risk?

Mr. BEDENBAUGH. Yes; unless that person has a share crop arrangement with the person coming on and then in that case he would be eligible, but if he cash-rents that farm to someone else and that person plants that tobacco on that farm, the farm owner wouldn't be eligible to vote in this referendum.

Mr. TALLON. And then, of course, this year, that still doesn't make any difference. As long as his cash rent——

Mr. BEDENBAUGH. I believe that applies to the leasing of tobacco of the farm. I believe the indications are that the rent or the compensation for those pounds of tobacco has to come out of the sale of the tobacco, which causes him to share in the risk of the production of that tobacco.

Mr. TALLON. I know you probably don't have these figures with you, but could you supply me with the number of people who are eligible in South Carolina in this referendum?

Mr. BEDENBAUGH. We are currently putting together a list of eligible voters. We have determined there are about 160,000 farms, and we are projecting we should send out approximately 2.5 per farm, which means that there could be an estimate—an estimate could be that there would be as many as 400,000 people eligible to vote in this referendum. I don't have it broken down by State.

[The information follows:]

After the Flue-cured tobacco referendum is conducted, ASCS will furnish a breakdown of the number of eligible voters by States.

Mr. ROSE. You are going to mail these things out, and you are not going to have return postage paid by USDA. Why not?

Mr. BEDENBAUGH. The only time we put postage on anything that comes in to ASCS is when we request the information to come to us. If we have a farmer out there and we contact that farmer to supply us with certain information relative to his farm operation, we will include in it a postage return envelope. In all of our elections and election processes and referendums, we don't put a return postage on the envelope because it is something that we

don't require. It is something that we don't require to be sent back to us, and this is the reason.

Mr. ROSE. The law requires you to have a referendum, and to have a referendum to have a ballot turned back in, so why can't you determine by that you are wanting something back from the person you mailed it to; namely—I mean, if nobody turns their ballots back in, you ain't got a tobacco program. Isn't that right?

Mr. BEDENBAUGH. Well, I guess, Congressman, we will count what is turned back in.

Mr. ROSE. Who made the decision not to put postage on these return envelopes?

Mr. BEDENBAUGH. ASCS made the decision based upon the fact that we do not require that ballot to be turned in. It is a voluntary thing. As far as the tobacco producer is concerned, he is certainly interested in his program and he will return it.

Mr. ROSE. Can he bring it in in person?

Mr. BEDENBAUGH. Yes; he can bring it in in person and not put a stamp on it.

Mr. ROSE. Does it say that on the ballot?

Mr. BEDENBAUGH. There will be instructions which would certainly give him that option.

Mr. ROSE. Have you got a copy of the instructions?

Mr. BEDENBAUGH. No. The instructions haven't been put together yet for this referendum. I will try to submit a copy for the record later.

[The information follows:]

EXHIBIT 5 (Par. 46–48)

[INSTRUCTIONS FOR VOTING IN THE (ENTER REFERENDUM PERIOD) REFERENDUM FOR (ENTER COMMODITY)]

1. Place a check mark in the "Yes" or "No" box on the ballot.
2. Place ballot in the enclosed plain envelope.
3. Seal the plain envelope.
4. Place the plain envelope in the self-addressed certification envelope.
5. Seal the certification envelope.
6. Sign the certification on the reverse side of the certification envelope or have your mark witnessed. Ballot will not be counted if certification is not properly signed.
7. Place a stamp on certification envelope. Ballot will not be delivered unless adequate postage is provided.
8. Return the certification envelope containing the sealed plain envelope to (enter address to which ballot is to be returned) by mail or in person.

RETURNING BALLOTS

By Mail. If mailed, the certification envelope must be postmarked not later than midnight on (enter last day of referendum period) and received at (enter address to which ballot is to be returned) before the start of canvassing the ballots.

In Person. If returned in person, the certification envelope must be received at (enter address to which ballot is to be returned) by the close of the work day (enter closing time and last day of referendum period).

CANVASSING BALLOTS

Ballots will be canvassed on (enter date and time of canvassing ballots). If you have any questions about this referendum, contact the county ASCS office.

Mr. ROSE. Excuse us for a brief moment while we go vote. We will be right back.

[Recess taken.]

Mr. ROSE. The subcommittee will resume. I hope we can conclude now without another interruption.

What steps do you plan to take to inform farmers about the referendum prior to the mailing, or will the first they hear about it be when they get a ballot with instructions in the mail?

Mr. BEDENBAUGH. No, Mr. Chairman, we are in the process of instructing our State and county offices to make sure that there is media coverage, and normally the local papers and the radio stations in the area we are trying to get this word out will give us public service time for media coverage.

Mr. ROSE. In other words, you are not going to buy any time?

Mr. BEDENBAUGH. No; we don't intend to buy any ads or any media time to get this word out because normally our local papers and radio stations will give us media time to make sure all farmers who do not receive a ballot by mail, and they feel they are eligible to vote, will be given an opportunity to come into the county office and pick up a ballot.

Mr. ROSE. When are the ballots going to be mailed?

Mr. BEDENBAUGH. The date hasn't been set. The referendum will have to be held between Monday and Friday before January 15. The ballot will be in their hands on Monday—I don't have a calendar, but I would suggest January 6. The ballots will be returned after January 10, which is a Friday, and I believe the next Wednesday, which is the 15th, would be the proper time to tabulate those ballots.

Mr. ROSE. Are you going to count a ballot, only those ballots that were received in the business day on the 15th?

Mr. BEDENBAUGH. The ones that are postmarked by the end of the business day on the 10th, which would come in on the following Monday and Tuesday, and then on the 15th, which would be on a Wednesday, would be the day that we would normally tabulate those ballots.

Mr. ROSE. They got to be postmarked by the 10th?

Mr. BEDENBAUGH. No. If the 10th is on Friday; yes. I don't have a calendar with me, but I seem to remember that the 6th is on Monday, the 10th is on Friday, and the 15th is the following Wednesday, and those ballots postmarked on the 10th will be honored and counted.

Mr. ROSE. Right now, do you have a master list that you are working from here in Washington?

Mr. BEDENBAUGH. No. A voter eligibility list?

Mr. ROSE. Yes.

Mr. BEDENBAUGH. These lists are being prepared in our county offices.

Mr. ROSE. Why don't you have a master list?

Mr. BEDENBAUGH. I am sure we have maybe a master list of the operators, but I don't believe our tobacco list would include all eligible voters, not until the end of the year. Anyway, that list wouldn't include——

Mr. ROSE. You are relying on the county offices to prepare their own county lists——

Mr. BEDENBAUGH. We are asking our county offices to prepare an eligibility list for that county; yes.

Mr. ROSE. All right. Why can't you mail out these ballots, say, in late December and give people more time——

Mr. BEDENBAUGH. We will. We will mail them out just as quickly as we can get all the information pertinent to the referendum, when we can complete our list, we will mail them out just as soon as possible so there will be ample time for everyone to receive a ballot and be given an opportunity to vote; if they don't receive a ballot, to question why they didn't receive it and if they feel they are eligible, then they will come into the county office and receive a ballot.

We are not going to question their eligibility until the ballot comes back in.

Mr. ROSE. Somebody is making a determination right now in a county office as to who is eligible and who is not?

Mr. BEDENBAUGH. That is correct.

Mr. ROSE. And they are going to be mailed out from the county or from Kansas City?

Mr. BEDENBAUGH. They will be mailed out from the county to the farmer.

Mr. ROSE. All right. They can either bring them back or mail them back?

Mr. BEDENBAUGH. They can bring them back or mail them back, and we will make sure that those instructions are evident.

Mr. ROSE. You are going to ask the local radio, television, and newspapers——

Mr. BEDENBAUGH. We will also use our newsletter that goes from our county ASCS offices, to use that as a vehicle, which we notify our people, and we are going to ask our county executive directors to solicit the support of the local media, to make sure that all tobacco farmers are aware of the election, and in case they have not received a ballot and they think they are eligible, to come into the county office and obtain a ballot so that everybody will be given an opportunity to vote.

Mr. ROSE. According to USDA's own figures, there is a 33-percent higher rate of return for things that you send out with postage paid.

Mr. BEDENBAUGH. I don't doubt that at all. But it is the policy of ASCS to only put postage on that which we request to be returned. And the farmer—you know, the tobacco farmer has the option to either vote or not to vote.

Mr. ROSE. What percentage of the eligible voters voted in 1982, 1983?

Mr. BEDENBAUGH. We really don't know. I believe my figures indicate that approximately 107,000 people did vote out of approximately 400,000 eligible voters. It would indicate maybe about 26 or 27 percent votes when we had it by polling place. But if our estimate of 400,000 eligible voters is correct, then we could only speculate that about 26 or 27 percent voted. We do not have the figures of the exact number who voted relative to those eligible voters.

Mr. ROSE. It looks like that—you know, something as important as the future of the program, you would have all this detailed information.

Mr. BEDENBAUGH. It would seem that, but I assure you after this election, we will have that information.

Mr. ROSE. What was the vote? How many were for it and how many were against it the last time around?

Mr. BEDENBAUGH. 105,257 voted yes, and 7,057 voted no. The total vote was 112,314, which was 93.72 percent in favor of quotas. There were 2,839 challenged votes. But for our records to indicate how many voted, I am sorry, but we don't have that information.

Mr. ROSE. You do know how many voted?

Mr. BEDENBAUGH. Yes.

Mr. ROSE. You don't know how many were eligible?

Mr. BEDENBAUGH. We do not know how many were eligible to vote. We do not have that information. We do know how many voted.

Mr. ROSE. Did each county have to check the eligibility of the people who voted when they voted?

Mr. BEDENBAUGH. It had to be done at the polling place. The polling place had a list of eligible voters for that polling place, and they were supposed to check the eligibility of those that voted. A problem arose that we got challenged in five counties in North Carolina.

Mr. ROSE. Before we get together again, I think you ought to see if you can't institute a way to produce a master list and have it or else we will put something in the conference report that says you will have it, and I just——

Mr. BEDENBAUGH. We will have a master list this year, Mr. Chairman, yes.

Mr. ROSE. Because I think everybody——

Mr. BEDENBAUGH. I agree with you; it is very, very important.

Mr. ROSE. In the history of ASCS, since you have been in the Department, have you seen an election go from a walk-in to a polling-place-type of ballot to a mail-in ballot? Have you seen—you got a lot of programs now that are by mail referendum, isn't that right?

Mr. BEDENBAUGH. Yes.

Mr. ROSE. Do you have any still—you walk in and vote to a polling place?

Mr. BEDENBAUGH. This is the only one.

Mr. ROSE. Well, were there ever others?

Mr. BEDENBAUGH. There were others, I believe, prior. It indicated in 1971, there was a special burley referendum where there was, but to my knowledge that is the last one other than Flue-cured tobacco. Prior to 1966, I guess all of them—a great number of them was held at polling places. But from 1967 on, other than Flue-cured tobacco referendum at polling places, and that one instance where burley had theirs——

Mr. ROSE. Can you tell me of another commodity that has had a referendum recently by mail?

Mr. BEDENBAUGH. When we had a peanut referendum.

Mr. ROSE. When is the last time you had a peanut referendum?

Mr. BEDENBAUGH. We will have another one this year. Three years ago, we had a peanut referendum.

Mr. ROSE. You had a peanut referendum 3 years ago, you did it by mail. Do you know anything about how many people responded?

Mr. BEDENBAUGH. We can provide it for the record later.

[The information follows:]

There were 38,771 votes cast.

Mr. ROSE. What I would like to find out, and tell me in a note, based on the number of people who were eligible to vote in the peanut referendum, how many people voted?

Mr. BEDENBAUGH. We will provide that for you, Mr. Chairman.

[The information follows:]

ASCS does not have a record of the number of people that were eligible to vote, we estimate that there were approximately 105,000 eligible voters. A total of 38,771 people voted in the referendum. Of those voting 93.9 percent voted in favor of quotas and a loan program for the next four crop years.

Mr. ROSE. The other thing is, do you require a simple majority or two-thirds majority to keep the program in place?

Mr. BEDENBAUGH. We require a two-thirds majority to keep the program in place of those people voting.

Mr. ROSE. All right.

Mr. Tallon, do you have any questions at this point?

Mr. TALLON. Just one, and maybe it has already been answered. When do you count the votes?

Mr. BEDENBAUGH. We will likely count the votes on January 15, which will be Wednesday after the voting process, the previous week.

Mr. TALLON. You think the ballots will be out in December?

Mr. BEDENBAUGH. Just as quickly as we can get the ballots out so the tobacco farmer can have all the time he can have to study that ballot and make a determination whether he would like to vote for or against it.

Mr. TALLON. Thank you.

Mr. BEDENBAUGH. I would think one factor that could be a consideration, and that is the quota announcement which will be by December 15.

Mr. ROSE. Why do you think it would be a factor?

Mr. BEDENBAUGH. If I were a tobacco farmer, I would want to know what my chances were to grow the normal crop of tobacco that fits my situation before I voted on it. I am just surmising. I think had we had it in his hands by December 15 when the quota announcement will probably be announced, that he should have ample time to make that determination after that.

Mr. ROSE. Going to nonauction warehouse sales, will you provide us for the record a comparison of how nonauction warehouse sales, so far as the number of sales and the poundage involved, has changed over the past 3 years? Can you get us that for the record?

Mr. BEDENBAUGH. Yes.

[The information follows:]

Year	Auction sales (pounds)	Nonauction sales (pounds)
1983	814,697,830	3,506,166
1984	845,565,220	5,146,353
1985	787,188,731	4,600,514

Mr. ROSE. You haven't presented that to us here, I don't believe.

Mr. BEDENBAUGH. I saw some figures just recently that indicated that of the total sales of tobacco that nonauction sales represented

over a 3-year period about, I believe the figure I saw was 0.57 percent of all tobacco sold was at nonauction and maybe a third of that went directly to the tobacco companies, another third went through dealers, and the other third was purchased by warehousemen buying direct from farmers.

Mr. ROSE. The Flue-Cured Tobacco Advisory Committee has made several recommendations regarding legislative changes which would limit these nonauction warehouse transactions, and they include limiting sales to a weekly basis, inspecting and approving sales in the same manner as applicable to warehouse sales and requiring the producer to designate his or her sales as nonauction warehouse sales, at the same time that auction warehouses are designated by producers.

And all expenses incurred by USDA under these recommendations would be paid for on a user fee basis. Are you aware of those recommendations?

Mr. BEDENBAUGH. Yes; I am aware of those recommendations.

Mr. ROSE. What have you done with them?

Mr. BEDENBAUGH. We haven't done anything with them yet. Our opinion would be that it would be very difficult to restrict a nonauction sale to the time that our people would be available to be involved in it, because obviously nonauction sales take place at night, they take place over the weekend, they take place at the convenience of the seller and the buyer.

Really, when the quantity involved in nonauction sales gets to the point where it is significant, and I am not too sure that 0.57 percent of the total sales over a 3-year period at nonauction is significant, you know, to have an impact upon the flow of tobacco in the marketplace, and until that point is reached where it is significant, we would not get involved in applying the designation process to nonauction sales as we do to auction sales.

You know, it seems to me that if we require farmers at nonauction to designate tobacco, that the quantity is so small that it would certainly tend to prevent that from happening.

Mr. ROSE. Well, maybe one of your associates there can answer this if you are not directly familiar. If a warehouseman buys a farmer's tobacco during a regular sale, and then turns around and later sells that tobacco directly to the company at a nonauction sale, would he have to fill out these forms?

Mr. BEDENBAUGH. First of all, Mr. Chairman—for the record, I haven't had an opportunity to recognize the technical people I have here. With me is Jay York, who is Acting Director of the Tobacco Division of ASCS, and Lionel Edwards, who is Director of the Tobacco Division of AMS. At this time, I would ask Jay York to respond to that.

Mr. YORK. Mr. Chairman, if he sold it directly to another buyer, he would be required to enter that on the MQ-72.2 and MQ-79-2.

Mr. ROSE. Would he indicate the price he received for it?

Mr. YORK. Pounds and total dollars. I think it includes total dollars.

Mr. ROSE. So if a warehouseman—if I take my tobacco to a warehouse and the warehouseman buys my tobacco, and a week later, he sells it to a dealer or a company, or however he sells it, not at an auction sale, there would be a record of not only who he sold it

to, the pounds he sold and the total dollar consideration he got for it; is that right?

Mr. YORK. Yes, sir. Now there is one other instance here——

Mr. ROSE. Would there be any record of where he got that tobacco from?

Mr. YORK. Yes. The producer he bought it from would be on there. It would be identified, the source from which he received it.

Mr. ROSE. On this?

Mr. YORK. Yes.

Mr. ROSE. In other words, you could look at the MQ–79 records and find out where a warehouseman had bought tobacco at the auction floor and turned around——

Mr. YORK. If he bought it on his auction floor, it wouldn't go on the MQ–79, it would go on the MQ–80. If he buys it at the regular sale at auction, it is reported on the MQ–80.

Mr. ROSE. Would how much he paid for it and the farmer's number all be included?

Mr. YORK. On the MQ–80, it wouldn't have that. We go back to the floor sheet and pick that up.

Now if that warehouseman purchased tobacco directly from a producer and resells it at auction, then he would enter the pounds sold on the MQ–80 and not the MQ–79.

Mr. ROSE. Earle, are you hearing all this?

Mr. BEDENBAUGH. Yes.

Mr. ROSE. There is more than one way to skin a cat here. Are all of these combinations of different types of arrangements, which you say is 0.57 of 1 percent——

Mr. BEDENBAUGH. Yes. That is a 3-year average. My figures would—the figures I would recall, not in any 1 year has it been as much as 0.57 of 1 percent sold at auction.

Mr. ROSE. If a warehouseman bought a farmer's tobacco at 1 cent above support price and then turned around a week later and sold it for 20 cents above support price, would there be anything illegal with that?

Mr. BEDENBAUGH. No.

Mr. ROSE. Is there anywhere a newspaper reporter or an investigator could go, look and find that kind of a transaction in the public record?

Mr. YORK. It would lose its identity once it went through that auction sale. It is pounds, then.

Mr. ROSE. All right. Can we ask you, if you will now, to talk to us a little bit, finish about—Lindsay, do you and Robin have any questions?

Mr. THOMAS. No.

Mr. ROSE. Talk about the seed issue.

Mr. BEDENBAUGH. Would you like for me to continue the statement?

Mr. ROSE. Please.

Mr. BEDENBAUGH. We are talking about tobacco seed.

The Tobacco Seed and Plant Exportation Act, Public Law 76–543, was primarily designed to protect tobacco growers by limiting or restricting the exportation of tobacco seed or live tobacco plants. Permits, issued by USDA, are limited to governments or agencies engaged in conducting agricultural experiments, and quantities ex-

ported are limited to one-half gram or 500 plants per variety. The restrictions do not apply to nicotiana rustica. Permits have been confined, almost exclusively, to tobacco seed; the exception being exportation of live plants to Canada.

The Tobacco Division, AMS, USDA, made a report to this committee on the administration of this law on September 12, 1984. Since that report, the Tobacco Division, AMS, has issued 13 export permits; 7 requests for permits have been rejected.

Also, efforts have been made to determine if tobacco seed was being illegally taken or shipped out of the country.

Four suspected violations of the act by seed breeders have been presented to the Office of the Inspector General [OIG] to determine if criminal investigation is warranted. Two of these firms are located in North Carolina, one in South Carolina, and one in Kentucky.

Mr. Chairman, we realize the information provided is of a very general nature. However, in view of the four cases which have been presented to the OIG to determine prosecutive interest by the U.S. attorneys, it would be inappropriate for us to release or discuss any information relevant to our findings thus far. To do so could impede the investigations.

Mr. Chairman, as I stated, Lionel Edwards, Director of the Tobacco Division, AMS, is here, and he will discuss anything relevant to the tobacco seed part of the area.

Mr. ROSE. Thank you very much.

What about the Canadian Seed Journal advertisement?

Mr. EDWARDS. We have found some seed breeders were advertising in Canadian Farm Journals.

Mr. ROSE. Is that part of your investigation?

Mr. EDWARDS. Yes, sir.

Mr. ROSE. Will you inform the subcommittee at what point the U.S. attorney makes any decision?

Mr. EDWARDS. Yes, sir.

Mr. ROSE. If they decide to prosecute, if they decide not to prosecute, would you let us know?

We also understand that several of the cigarette companies have refused to open their books on this subject without receiving immunity. Can you comment on that?

Mr. EDWARDS. I think maybe one firm asked for immunity, but the vast majority of them, sir, just flatly declined any review of their records.

Mr. ROSE. I want to compliment you for your vigor with which you have worked on this since our hearing in 1984, on September 12, or thereabouts. You all have changed the way that was handled, and we appreciate it very much. We hope you will continue what you are doing and keep us advised of your progress. We thank you very much for that.

Comments or questions from other members?

[No response.]

Mr. ROSE. If not, then, I want to thank all three of you for coming. You will give us certain information for the record about the referendum, you will keep us informed about the AMS investigation, and I would appreciate, Mr. York, if one of you could send me a short memo on how one might trace a farmer's tobacco from

the warehouse floor to the warehouseman's inventory, and then out again into a company.

[The information follows:]

TRACING THE MOVEMENT OF PRODUCER'S TOBACCO THROUGH THE AUCTION AND NONAUCTION SYSTEM

TRACING PRODUCER TOBACCO THROUGH THE AUCTION SYSTEM

When a producer's tobacco is weighed in at the warehouse auction market a sales bill is prepared and each individual sheet of tobacco is listed. The sales bill includes the farm operator's name and address and the farm identification number. When the producer's tobacco is sold, the buyer's identification symbol, the government grade and the price paid for each sheet of tobacco is recorded on the sales bill. If a sheet of tobacco goes to Stabilization it is noted on the sales bill. At the end of the auction sale the warehouse operator prepares an MQ–80, Daily Warehouse Sales Summary. The MQ–80 report includes the total pounds purchased and total pounds resold by each buying company represented on the auction sale, total pounds received by Stabilization and any purchases and resales by the warehouse operator. After the auction sale, the pounds of quota sold are deducted from the producer's marketing card. The purchaser of the tobacco usually commingles the tobacco with other tobacco that has been purchased. Thus, the producer's identity is lost after the tobacco has been sold.

TRACING PRODUCER TOBACCO THROUGH THE NONAUCTION SYSTEM

When a producer sells his tobacco at nonauction the buyer is reponsible for deducting the pounds sold from the producer's marketing card. The buyer is also required to prepare an MQ–72–2 and record the nonauction purchase in his MQ–79 Dealer's Record Book. In the MQ–79 he records the name and address of the producer, the farm indentification number, the pounds purchased, the date of purchase and the gross amount paid the producer. Once the buyer purchases a producer's tobacco he may commingle the tobacco with tobacco purchased from other producers or dealers. When the buyer sells tobacco he enters in his MQ–79 the date of sale, name and dealer identification of purchaser of tobacco, pounds sold and the gross amount received.

In each of the above situations the price paid the producer for his tobacco is available either on the sales bill or MQ–79. However, when the warehousemen or dealer resales the tobacco it is usually commingled with other tobacco that has been purchased. Therefore, it would not be possible to identify the exact price the warehousemen or dealer received for any particular producers tobacco.

Mr. ROSE. The reason I ask is, there are a great many farmers who are afraid warehouses have been buying up their tobacco and reselling it at 10, 20, 30 cents a pound more than they were paid for it, and they may want us to ask to have a little law inserted in the conference report that requires a warehouseman to reveal how much he paid a farmer for his tobacco, who he sold it to, and how much he sold it for.

If you could kind of give us a little memo on that, we would appreciate it. Thank you very much.

The subcommittee stands adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

Statement of Earle J. Bedenbaugh
Deputy Administrator for State and County Operations
Agricultural Stabilization and Conservation Service
U.S. Department of Agriculture
before the
House Committee on Agriculture
Subcommittee on Tobacco and Peanuts
November 1, 1985

Mr. Chairman and members of the Subcommittee, my name is Earle J. Bedenbaugh. I am Deputy Administrator for State and County Operations, Agricultural Stabilization and Conservation Service (ASCS). I appreciate the opportunity to appear before you today to discuss the nonauction warehouse sales of tobacco, the sale of tobacco seed, and the administration of the flue-cured tobacco referendum.

Flue-Cured Tobacco Referendum

Section 317(d) of the Agricultural Adjustment Act of 1938, as amended, provides that the Secretary of Agriculture shall proclaim, not later than December 15, 1985, a national marketing quota for flue-cured tobacco for the 3 marketing years beginning on July 1, 1986. Also, section 312(c) of the 1938 Act provides that within 30 days after the proclamation of the national marketing quotas the Secretary shall conduct a referendum of farmers engaged in the production of the 1985 crop of flue-cured tobacco to determine whether such farmers are in favor of or opposed to such quotas for the next 3 marketing years.

The regulations which govern the conduct of marketing quota referenda provide at 7 CFR §717.2 that the Deputy Administrator, State and County Operations, ASCS, shall be in charge of, and responsible for, conducting each referendum required by the 1938 Act. These regulations prescribe that each referendum shall be by mail ballot unless the Administrator, ASCS, or the Deputy Administrator, State and County Operations, ASCS, prescribes that a particular referendum shall be held at polling places.

Except for a special referendum which was conducted with regard to poundage quotas for burley tobacco in 1971 and for referenda which were held for flue-cured tobacco, all marketing quota referenda held since 1967 for all commodities have been held by mail ballot. The referenda have been held by mail ballot as cost reduction measures.

In the past, we have held flue-cured tobacco referenda at polling places in order to accommodate Tobacco Associates, Inc. in the conduct of its referenda in North Carolina and South Carolina. The Tobacco Associates, Inc. holds referenda with regard to flue-cured tobacco promotional programs which are authorized by State law. For a number of years prior to the time when ASCS began to conduct its referenda by mail ballot, ASCS and Tobacco Associates, Inc. had held their referenda jointly. When ASCS began to hold referenda by mail ballot, it was found that Tobacco Associates, Inc. did not have the authority under State law to conduct referenda by mail ballot. ASCS, under contractual arrangements with Tobacco Associates, Inc., continued to conduct joint referenda at the polling place. The amounts paid by Tobacco Associates, Inc., to reimburse ASCS for the conduct of those referenda have resulted in a net cost to ASCS which is no more than the cost of conducting a referenda by mail ballot.

Our experience indicates that more people vote when a referendum is held by mail than vote when the polling place method is used. Increases of 19.7 percent, 15.1 percent, and 50.2 percent were experienced in the first mail referenda which were conducted for burley, fire-cured, and dark air-cured tobaccos, respectively, when compared to the preceding polling place referendum which had been held for each respective kind of tobacco.

Our experiences in the last flue-cured tobacco referendum revealed the need to exercise a greater degree of supervision and training when conducting our referenda. We have done this by sending explanatory information to our State and County ASCS employees in April 1985. In addition, meetings have been scheduled with our personnel in the flue-cured tobacco States to explain voter eligibility requirements and to put an emphasis on the need to exercise extreme care in following regulations and implementing procedures in conducting the referendum. Similar efforts have been and will continue to be taken with respect to the burley tobacco referendum.

In view of all of these factors, I have notified our State and County ASCS Offices that the upcoming flue-cured tobacco referendum will be conducted by mail ballot. These offices have been directed to publicize the referendum, including voter eligibility requirements and the method for conducting the referendum.

TOBACCO MARKETINGS - AUCTION AND NONAUCTION

Currently tobacco producers may market their tobacco crop through the auction warehouse system or directly to tobacco dealers. This latter method is commonly referred to as nonauction tobacco sales. The two methods of marketing with respect to recordkeeping and reporting requirements are described below.

Auction Sales

At the time the tobacco is weighed in, the producer presents a marketing card to a warehouse employee to identify the farm of production. The marketing card remains in the custody of the warehousemen until that particular lot of tobacco is marketed. After the auction the marketing card and the sales bill are presented to the ASCS marketing recorder. The marketing recorder adds the pounds on the sales bill and deducts the pounds sold from the remaining quota balance on the producer's marketing card. The producer's record of marketing is submitted to Kansas City Management Office (KCMO) on Form MQ-72-1 where it is entered into a computer. Form MQ-72-1 includes the date of sale, the warehouse identification number and the pounds marketed. At the end of the marketing season KCMO furnishes each county ASCS office a report of all the marketings (auction and nonauction) for each farm in the county. The county ASCS office compares each farm's marketing card with the KCMO report of marketing and reconciles any differences.

Nonauction Purchases

Any tobacco dealer must be registered with USDA. The tobacco program regulations issued by the Department define a "dealer" as a person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers (see 7 CFR §725.51(g)). Such registrations are handled by the North Carolina State ASCS Office. Dealers are issued a dealer's identification card, Form MQ-79-2, and Form MQ-79, Dealers Record Book. When a tobacco producer sells tobacco directly to a dealer the producer presents a marketing card which identifies the farm of production to the dealer. The dealer records the date of sale on the marketing card and deducts the pounds sold from the remaining quota balance on the producer's marketing card. The dealer completes Form MQ-72-2, Report of Tobacco Non Auction Purchases. The report includes the date of purchase, the dealer registration number, the farm identification number, the producer's name and address, the pounds purchased and the producer's signature. The dealer records this transaction in a Dealer Record Book. At the end of each week during the marketing season the dealer submits a copy of Forms MQ-72-2 and MQ-79 to the State ASCS office in the State where the dealer's account is maintained. Copies of these documents are furnished to KCMO where they are entered into a computer.

Each dealer is responsible for maintaining current records of purchases and resales on the Dealer Record Book. Each dealer is also responsible for collecting marketing quota penalties from producers and collecting producer contributions to the No Net Cost Tobacco Fund or Account and submitting such collections to the appropriate State ASCS office. At the end of the dealer's marketing season the State ASCS office reconciles each dealer's account and, if the dealer's resales of tobacco exceeds the quantity purchases, the dealer is assessed a marketing quota penalty.

Tobacco Seed

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Thank you Mr. Chairman, I would be pleased to respond to any questions you or the members of the subcommittee may have.